

the potential for private foreign investment in their systems could be a useful mechanism to facilitate access in other markets."^{262/}

Recent events suggest that Commissioner Barrett's observations were entirely on the mark. A study presented to the European Commission ("EC") in late March 1994 recommends that the EC reserve the right to deny market access to any global LEO satellite project licensed elsewhere through a discriminatory process, or one that "otherwise disadvantages European Union applicants on grounds of foreign ownership, local job creation or other nationalistic trade and industry grounds."^{263/} The imposition of common carrier regulation on U.S. MSS Above 1 GHz systems therefore seems likely to result directly in the denial of access of such systems to one of the most lucrative and dynamic markets in the world, and surely to many other markets as well.

Such retaliatory action by foreign governments would affect not only the ability of U.S. MSS Above 1 GHz systems to penetrate foreign markets, but the ability of U.S. investors to participate in foreign MSS systems as well. The danger of such action is not merely theoretical. In May 1993, the Canadian Department of

^{262/} FCC News Release, Report No. DC-2518, Licensing and Operating Procedures for the Non-Voice, Non-Geostationary Mobile Satellite Service Established (CC Docket 92-76), Separate Statement of Commissioner Andrew C. Barrett at 1 (October 21, 1993).

^{263/} EC Concerned About Vertical Integration in Global Cellular Projects, Communications Daily, Mar. 31, 1994, at 1-2 (quoting study by KPMG entitled Satellite Personal Communications and Their Consequences for European Communications, Trade & Industry).

Communications released a "Proposed Policy For The Provision Of Mobile Satellite Services Via Regional And Global Satellite Systems In The Canadian Market."^{264/}

The policy statement proposed that the Canadian Minister of Communications license regional and global mobile satellite systems with the following conditions, among others:

- the applicant must be incorporated under the laws of Canada or a province, and a minimum level of eighty per cent Canadian ownership and control in fact by Canadians must be maintained;
- The applicant must hold an equity share in the mobile satellite system at least proportional to use of that system in Canada, and the equity position must be accompanied by an appropriate interest in the direction and control of the regional or global mobile satellite system . . .^{265/}

The policy statement also proposed to require that, where a mobile satellite system's ground segment is provided by a separate entity, Canadians must hold an equity position in, and "concomitant interest in the direction and control of," the separate entity "in an amount at least proportional to use of the mobile satellite system in Canada."^{266/}

^{264/} Department of Communications Radiocommunication Act, Notice No. DGTP-006-93 (May 12, 1993), at 1.

^{265/} Id. at 12.

^{266/} Id. at 12-13.

Such proposals pose obvious threats to the free flow of goods and services across national borders. Yet if the United States is to be the first nation to establish MSS Above 1 GHz systems, and if it applies the similarly restrictive provisions of Section 310(b) to U.S. MSS Above 1 GHz systems, it can hardly expect that other nations will behave any differently.

In short, foreign investment in U.S. MSS Above 1 GHz systems is essential to the development of this service. If common carrier regulation is imposed, and ownership structures and foreign investment are consequently constrained, the U.S. MSS Above 1 GHz service will surely suffer and may never be established at all. Such a result must be avoided at all costs.

4. To the Extent That The Commission Regulates Either The Provision Of MSS Above 1 GHz Satellite Capacity Or The Provision Of CMRS Via That Capacity As Common Carriage, It Should Forbear From Imposing Title II Regulation To The Maximum Possible Extent.

As the provision of MSS Above 1 GHz satellite capacity to CMRS providers bears no resemblance to common carriage, the Commission cannot reasonably impose common carrier regulation upon such activity. Should it choose to regulate such activity as common carriage, however, and to the extent that it determines that the provision of CMRS via MSS Above 1 GHz space segment capacity

is common carriage, the Commission should forbear from imposing Title II regulations on both forms of activity to the maximum possible extent.

With respect to the provision of space segment capacity by MSS Above 1 GHz system licensees, TRW has shown above that the competition among system licensees and the process of individualized negotiation by which space segment capacity will be sold or leased to CMRS providers make Title II regulation of the space segment offerings inappropriate.^{267/} In situations where capacity may be offered directly to end users, individual MSS Above 1 GHz operators, by virtue of their competitive environment, will lack market power. Similarly, as to the regulation of other types of CMRS provided via MSS Above 1 GHz systems, the Commission has found in its proceeding on the regulatory treatment of Mobile Services that all CMRS providers other than cellular service licensees currently lack market power, and that the public interest will consequently be served by its forbearance from certain requirements in Title II of the Act that otherwise would be placed upon those service providers.^{268/}

Insofar as the MSS Above 1 GHz service is a new market that will be characterized by multiple entrants who lack market power, TRW submits that the Commission should extend its policy of forbearance from the enforcement of Title II

^{267/} See infra, Section V(A)(4).

^{268/} See Regulatory Treatment of Mobile Services, 9 FCC Rcd at 1467.

requirements to CMRS services provided via MSS Above 1 GHz systems. Indeed, given the unique technical, financial and competitive challenges faced by applicants for MSS Above 1 GHz systems, TRW urges the Commission to exercise additional forbearance from Title II regulation of MSS Above 1 GHz licensees and associated service providers to the maximum possible extent.

The level of competition in the new MSS Above 1 GHz service will render pointless regulations designed to guard against excessive concentrations of market power. To the extent that any such excessive concentration should develop, however, the Commission itself has noted that the continued applicability of Sections 201, 202 and 208 will provide consumers of CMRS with adequate protection.^{269/} In the event that an MSS Above 1 GHz system licensee or CMRS provider should ever violate Sections 201 or 202, "the Section 208 complaint process would permit challenges to [the licensee's] rates or practices and full compensation for any harm due to violations of the Act."^{270/} Therefore, the Commission may, at the least, safely forbear from imposing on parties providing CMRS via MSS Above 1 GHz systems the Title II requirements that it will forbear from imposing on other CMRS providers (excluding cellular service providers).^{271/}

^{269/} See id. at 1478-79.

^{270/} Id. at 1479.

^{271/} See id. at 1478-90.

B. TRW GENERALLY SUPPORTS THE COMMISSION'S PROPOSALS REGARDING BLANKET LICENSING OF MSS ABOVE 1 GHZ SYSTEMS, LICENSE TERMS, AND SYSTEM REPLACEMENT APPLICATIONS, BUT RENEWS ITS CALL FOR ADOPTION OF RENEWAL EXPECTANCY.

The Commission's NPRM includes a number of proposals regarding the mechanics of MSS Above 1 GHz licenses that are based directly on regulations that the Commission adopted late last year in its Report and Order establishing the new NVNG MSS.^{272/} In particular, the Commission proposes to use the "blanket" licensing approach for MSS Above 1 GHz systems;^{273/} it proposes a ten-year license term that will begin to run on the date on which the first space station in the licensee's system begins transmissions;^{274/} it proposes to allow blanket licensees to replace satellites lost and retired during the license term with "technically identical" counterparts (either launched fresh or activated from a previously-authorized cadre of in-orbit spares) upon certifying to the Commission that the replacement station is technically identical to those authorized and that there is no net increase in the number of operating satellites;^{275/} and it proposes to require that "system replacement

^{272/} See NVNG MSS Order, 8 FCC Rcd 8450.

^{273/} See NPRM, 9 FCC Rcd at 1134 (¶ 82). In its Report and Order in the NVNG MSS docket, the Commission, for the first time, adopted a rule permitting blanket licensing of space stations. See NVNG MSS Order, 8 FCC Rcd at 8454.

^{274/} See NPRM, 9 FCC Rcd at 1135 (¶ 82).

^{275/} See id.

applications" be filed during a four-month window around the end of the seventh year of the existing license term.^{276/}

TRW concurs with the Commission's conclusion that MSS Above 1 GHz systems should receive "blanket" licenses to operate a specified number of space stations, including replacement stations as necessary to keep a full constellation in orbit. The blanket license concept is particularly well suited to non-geostationary satellite systems.

TRW supports the Commission's determination that each station must be "technically identical" to all other system space stations in order to fall under the replacement authorization. The requirement will prevent fraternal disputes as to whether minor and not-so-minor adjustments in spacecraft design may have an impact on the interference environment.^{277/}

TRW also supports the adoption of the ten-year license term. To assist both the licensee and the public in their planning efforts, however, TRW urges the Commission to issue a public notice that announces the commencement date of each system's license term. TRW proposes further that the license term itself start six months after the launch of the system's first spacecraft, or upon the licensee's filing of

^{276/} Id. at 1135 (¶ 83).

^{277/} See NVNG MSS Order, 8 FCC Rcd at 8452 (Commission rejects proposal to allow "operationally equivalent" space stations to meet replacement authority standard).

a certification reporting the "commencement of service transmissions," whichever comes first.

Without a public notice, it will be difficult to pinpoint the date on which the license term for a system starts. With a four month window for renewal applications that does not open until nearly seven years after the first transmission date, it is important that licensees and the public have an objective reference point from which they can readily and accurately ascertain the beginning and end of a particular license term. The six-month maximum period of post-launch checkout and testing proposed by TRW will provide systems an opportunity to assess their first satellite's performance before certifying its compliance with license terms to the Commission. Moreover, it will do so in a way that does not impinge upon the Commission's objectives in starting the license term upon the launch of the first spacecraft.

Finally, TRW urges the Commission to consider codifying a renewal expectancy that assures MSS Above 1 GHz system licensees of reauthorization, so long as they have a record of consistent regulatory compliance.^{278/} In the NVNG

^{278/} In a Joint Proposal that was filed in this proceeding in early 1993, TRW participated in proposing the following renewal expectancy standard for the MSS Above 1 GHz service:

(2) Renewal expectancy. [An MSS Above 1 GHz] Service renewal applicant shall receive a license renewal if its past record for the relevant license period demonstrates that the
(continued...)

MSS Order, the Commission rejected similar requests from the two principal applicants in that proceeding.^{279/} It decided to rely instead on its general policy of granting satellite operators replacement -- i.e., renewal -- authority "if the frequencies remain available for use by comparable types of systems[,]" and stated that "[t]his policy will provide NVNG operators with assurance that we generally intend to grant replacement [renewal] system authority, but will not hobble our ability to examine all factors that may ultimately prove relevant to such a grant."^{280/}

The case for a renewal expectancy is more pronounced for the MSS Above 1 GHz service than it was for the NVNG MSS. System costs in the NVNG

^{278/}(...continued)

renewal applicant:

- (i) Has substantially used its spectrum for its intended purpose;
- (ii) Has substantially complied with applicable Commission rules, policies, and the Communications Act; and
- (iii) Has not otherwise engaged in substantial relevant misconduct.

See Joint Proposal of TRW, Constellation, and Ellipsat, CC Docket No. 92-166 (filed January 5, 1993).

^{279/} See NVNG MSS Order, 8 FCC Rcd at 8454.

^{280/} Id. In the NPRM, the Commission cites its general policy on renewal applications, but does not even reiterate its general intention to grant renewal. See NPRM, 9 FCC Rcd at 1135 (¶ 83) & n.134 (citing NVNG MSS Order, *supra*; Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, 3 FCC Rcd 6972, 6976 n.31 (1988)).

MSS service are on the order of one hundred to two hundred million dollars -- an amount not inconsistent with the cost figures for the single or dual satellite domsat systems that the policy cited by the Commission was developed for. Here, the cost projections for the MSS Above 1 GHz systems will be in the one to four billion dollar range -- figures several orders of magnitude greater. Unfortunately, the general statement that renewal authorization will be granted "if the frequencies remain available for use by such systems" does not provide operators with much assurance.

TRW is aware that changed circumstances and policies can have an effect on the Commission's decision whether to reauthorize a system. The renewal expectancy TRW proposed earlier in this proceeding would not -- and indeed could not -- intrude on such a Commission decision. It believes that a renewal expectancy that is a step up from the current policy in terms of its reassurance to quality licensees is warranted for this service, and urges the Commission to adopt one that is similar to the proposal set out above.

C. TRW SUPPORTS THE COMMISSION'S IMPLEMENTATION MILESTONE PROPOSALS AND URGES FLEXIBILITY FOR THOSE SYSTEMS ABLE TO TAKE ADVANTAGE OF A PHASE-IN OF THEIR RESPECTIVE CONSTELLATIONS.

The Commission, noting that "[e]very satellite authorization issued by the Commission contains implementation milestones to ensure that licensees are

building their systems in a timely manner and that the orbit-spectrum resource is not being held by licensees unable or unwilling to proceed with their plans[.]"^{281/} proposed to include a uniform set of milestones for each MSS Above 1 GHz construction permit.^{282/} Although the Commission stated that it does not anticipate allowing "any substantial deviation" from these milestones (of which the construction initiation milestone appears to be the most important), it indicated that it "will consider a slightly different completion schedule . . . if an applicant can concretely demonstrate that the size or complexity of its system warrants some additional time in which to complete construction of the system or to launch all the system's satellites."^{283/}

TRW supports the Commission's milestone proposals. The spectrum to be used by the MSS Above 1 GHz applicants is limited in quantity, and should not be permitted to sit idle so long as additional permittees and licensees are standing in line to use it. TRW, however, would like the Commission to clarify three aspects of its milestone proposals.

^{281/} NPRM, 9 FCC Rcd at 1136 (¶ 84).

^{282/} The proposed milestones would ensure that each authorized system licensee has the first two satellites of its system under construction (i.e., to the point where the licensee has executed a non-contingent construction satellite) within one year and completed within four years of grant; has the remaining satellites under construction within three years of grant; and has the entire system launched and operational within six years of grant. Id. The Commission proposed that the failure to meet a required milestone will render the system authorization null and void by its own terms. Id.

^{283/} Id.

1. **In Recognition Of The Difficulty Operators Will Have In Accurately Forecasting The Development Of The MSS Above 1 GHz Service Market, The Commission Should Include An Opportunity For Licensees Of Partially-Launched Systems To Seek Modification Of Their Remaining Milestones.**

TRW believes that firm and even-handed enforcement of the milestones proposed in the NPRM for MSS Above 1 GHz systems is essential to the orderly development of the new service, and to ensure that spectrum is utilized efficiently. It therefore supports the timetable for system construction and launch that the Commission has proposed. At the same time, however, TRW recognizes that with the passage of time, the system requirements that seem so clear and definable today may look altogether different when examined in 20/20 hindsight just a few years from now. The MSS Above 1 GHz service market is, after all, untested, and most if not all of the applicants envision a service concept whereby they would primarily be making space segment capacity available on a global basis to the intermediate entities that would provide service to end users. The task facing the Commission is to impose milestone schedules on permittees that are firm and intractable enough to facilitate both the development of the service and efficient use of the limited available spectrum, yet also provide permittees/licensees with the expectation that they will have some flexibility to adjust to marketplace developments that simply cannot be modeled now with any certainty.

To these twin ends, TRW proposes that the Commission adopt a rule that provides that the Commission will entertain reasonable requests for extensions of milestone deadlines established in construction permits at any time after the commencement of the subject system's license term. Although the nature of the extension sought would necessarily vary from system to system, each request made pursuant to the proposed acknowledgment would have to be accompanied by a certification from the licensee that it remains committed to establishing the full constellation it was initially authorized to construct. The extension proposal advanced here would be in addition to, and not in lieu of, any other extensions of milestones that may be permitted (e.g., for reasons of satellite launch failures or other events that may be beyond the permittee/licensee's control).^{284/}

Once an MSS Above 1 GHz licensee has launched spacecraft (and absorbed the capital costs -- both recurring and nonrecurring -- necessary to reach that point), there can be no question as to its commitment to entering the service and fulfilling the balance of its construction and launch obligations. Providing these systems with a guaranteed opportunity to propose a modification of the milestones for some or all of their remaining spacecraft -- whether for the purpose of gearing further deployment to the developing realities of the marketplace or merely to reconcile the construction authorization with developments in the manufacturing and launch

^{284/} See *infra*, Section IV(C)(3).

schedules that may have arisen during the post-authorization period -- would not contravene the policy objectives underlying the current milestone proposal. To the contrary, such an opportunity may serve to ensure that those objectives get advanced insofar as an extension may forestall the automatic cancellation or revocation of the license of a system that is already providing service. In any event, the Commission would have to pass on any proposed extensions, and all licensees taking advantage of this extension opportunity would have certified their intention to complete the systems they were authorized to build.

In short, TRW seeks to have the Commission clarify for the record that one size may not fit all when it comes to MSS Above 1 GHz implementation milestones, and that "substantial compliance" should count for something. By codifying an express willingness to consider limited milestone extensions that are filed after authorized satellites are launched, the Commission can provide a necessary measure of flexibility to licensees that are diligently striving to meet the terms of their authorizations, avoid a precipitous and otherwise unwarranted revocation of a system license, yet still achieve its own regulatory objectives.

2. The Commission Should Refine Its "Null and Void" Result For Missed Milestones; The Current Formulation Creates Uncertainty.

The second point of clarification requested by TRW has to do with the Commission's proposal to have the missing of any milestone render the underlying authorization null and void.^{285/} TRW supports strict enforcement of all implementation milestones, and generally believes that any permittee or licensee that misses a milestone should have its authorization revoked. On the other hand, while the "null and void" formulation sounds clear and unequivocal on its face, it will, in practice, be quite ambiguous, and lead to continuing uncertainty. TRW proposes instead that permittees and licensees who miss implementation milestones (either by reporting that such milestones were not met or by failing to meet a reporting deadline)^{286/} should be ordered by the Commission to show cause why their authorizations should not be summarily revoked, with the rules specifying that the Commission's decision will be made on the basis of a paper record within an accelerated time frame for staff action and any administrative appeals.^{287/}

^{285/} See NPRM, 9 FCC Rcd at 1136 (¶ 84).

^{286/} See Section VI(E), infra.

^{287/} In this regard, TRW proposes that the Order to Show Cause Why System Authorization Should Not Be Revoked be a specific form that issues automatically (and publicly) ten days after the filing of a report of a missed milestone (see Proposed Rule 25.143(e)(2)) or twenty days after the passage of a milestone date without a report, whichever comes first. The permittee/licensee would then have fifteen days
(continued...)

The self-operation of missed milestones is not very effective. Other systems, the public at large, and even the subject system cannot know with certainty that a deadline was missed or whether a pleading citing mitigating circumstances was filed or that if such events occurred, whether the Commission has acted or when it will act. With the alternative approach suggested here, the Commission will continue to maintain its desired degree of control over licensees' diligence in constructing and establishing authorized systems, while licensees would also have an opportunity to demonstrate that a milestone may have been missed for reasons solely beyond its control.^{288/} The use of an accelerated decisional mechanism for ruling on asserted justifications for missed milestones would provide much needed certainty as to when an authorization is revoked, and what rights may attach to others as a result.

^{287/}(...continued)

within which to respond to the Order, interested parties would have fifteen days within which to comment on the permittee/licensee's response, and any replies would be due five days later. The Common Carrier Bureau would have thirty days from the last date on which replies may be filed to issue its decision on the Order (as well as on any timely filed petitions for reconsideration thereof), and the Commission would have sixty days from the conclusion of appropriate pleading cycles to act on applications for review of the Bureau's decision and any related petitions for reconsideration of its own actions.

^{288/} In the satellite field, uncertainties beyond licensees' control abound. These can take the form of launch failures, delays in deliveries of long-lead items procured from third parties that slow construction, anomalies with on-station spacecraft, and so on.

3. The Commission's Definition Of "Commencement Of Construction" Needs To Be Modified To Account For Situations Where The Permittee/Licensee Will Construct Its Own Satellites.

The final area of clarification requested by TRW comes in connection with the Commission's definition of the commencement of construction. In the NPRM, the Commission recites that it has "traditionally viewed the execution of a non-contingent construction contract as fulfilling [the commencement of construction] milestone."^{289/} This formulation works just fine in situations where the satellites will be constructed by third parties; it does not work so well in situations where the permittee/licensee will construct its own satellites.

TRW will construct the satellites that will comprise its MSS Above 1 GHz system. It proposes that the following formulation be deemed to satisfy the commencement of construction milestone for it and other similarly situated entities:

Construction of a satellite will be deemed to have commenced when the permittee certifies to the Commission that a construction plan is finalized and that non-contingent contracts with third parties have been concluded.

^{289/} NPRM, 9 FCC Rcd at 1136-1137 (¶ 85).

D. TRW SUPPORTS THE COMMISSION'S PROPOSED ANTI-TRAFFICKING RULE BUT URGES THAT CLARIFICATION BE PROVIDED TO ENSURE COMPLIANCE DURING THE APPLICATION STAGE OF THE PROCEEDINGS AS WELL.

In connection with its proposal to implement strict construction milestones, the Commission proposes to adopt a rule prohibiting "trafficking" in MSS Above 1 GHz licenses. More specifically, the Commission states:

Finally, to discourage speculators and to prevent unjust enrichment of those who do not implement systems, we propose to adopt a rule that prohibits trafficking in MSS Above 1 GHz licenses. Specifically, we propose, in section 25.143(g) of our proposed rules, to prohibit MSS Above 1 GHz licensees from selling a bare license for profit.^{290/}

While Proposed Rule 25.143(g) would prohibit "trafficking," there is no definitional guidance in the rule itself as to what precisely constitutes "trafficking."

Although TRW supports the adoption of an anti-trafficking policy for the MSS Above 1 GHz service, it also believes that the Commission should enforce the corollary principle embodied in its rules which is pertinent to the application stage. It has long been a key aspect of Commission regulation -- both in the satellite and other services -- that transfers of ownership reflecting changes in control of any applicant (and thus constituting a major amendment to the application) would violate the

^{290/} NPRM, 9 FCC Rcd at 1136 (¶ 84).

applicable cut-off rule and (absent certain extenuating circumstances) require dismissal of the application from the current processing round.^{291/} In fact, Sections 25.116(b)(3) and (c) of the Commission's satellite rules reflect this long-standing policy precisely.^{292/}

In recent months, two of the MSS Above 1 GHz applicants have announced significant changes to their respective applicant structures. In the first case, Motorola -- which is a wholly-owned subsidiary of Motorola, Inc. -- purported to report to the Commission (by means of an informal letter of counsel attaching a press release issued jointly by Motorola, Inc. and Iridium, Inc.) that a new company called Iridium, Inc., in which Motorola owns only a "minority interest," has purchased the Iridium space system from Motorola, Inc. (not from Motorola Satellite Communications, Inc. which is the applicant), and has also contracted with "Motorola's Satellite Communications Division for operation and maintenance of the Iridium system over five years, beginning in 1998."^{293/} Since these assertions strongly suggest that a substantial change in the ownership and control of the Motorola applied-for Iridium satellite system had occurred in violation of Rule 25.116, TRW

^{291/} See, e.g., 47 C.F.R. §§ 22.23(c)(4) & (g) and 73.3572(b) (1993); Hughes Communications, Inc. 59 R.R.2d 502 (Com. Car. Bur. 1985) (applying FCC waiver standard for exemption from the cut-off rule in the case of a satellite applicant).

^{292/} See 47 C.F.R. §§ 25.116(b)(3) and (c).

^{293/} Motorola, Inc. Press Release, "Motorola, Inc. and Iridium, Inc. Complete First-Round Financing of Iridium System," at 1, 2 & 4 (August 2, 1993).

raised the issue directly with the Commission.^{294/} When no action was taken by the Commission on the serious issues raised by TRW, and no response was forthcoming from Motorola (including even the filing of the amendment to the Motorola application called for by Rule 1.65),^{295/} TRW filed a subsequent letter with the new Chairman of the Commission reiterating its concerns.^{296/} To date, neither the Commission nor Motorola has responded to these requests for clarification.

The Commission's continuing refusal to address the nature of the transactions "reported" by Motorola is made all the more problematic by the language of two documents -- entitled "Iridium Space System Contract between Motorola, Inc. and Iridium, Inc." and "Iridium Communications Systems Operations and Maintenance Contract between Motorola, Inc. and Iridium, Inc.," respectively, both as amended to April 1, 1994 -- that were attached as exhibits to Motorola, Inc.'s April 1, 1994 Form 10-K filing with the Securities and Exchange Commission.^{297/} In the first contract, Motorola, Inc. (not applicant Motorola) agrees to sell to Iridium, Inc. (the entity referred to in Motorola's August 1993 filing with the Commission in which Motorola, Inc. possesses only a minority interest) the "Space System portion of the

^{294/} See Letter from Norman P. Leventhal et al., counsel to TRW, to William F. Caton, Acting Secretary, FCC, dated, August 11, 1993.

^{295/} See 47 C.F.R. § 1.65 (1992).

^{296/} See Letter from Norman P. Leventhal et al., to Reed E. Hundt, dated March 3, 1994.

^{297/} Motorola, Inc. is the parent of MSS Above 1 GHz applicant Motorola. The two contracts were included in Exhibit 10.19 to Motorola, Inc.'s Form 10-K filing.

IRIDIUM Communications System."^{298/} It transfers to Iridium, Inc. title to and risk of loss for each of the constellation's satellites, and retains responsibility for the management and control of the Space System only during the "Initial Operating Period."^{299/} After the "Initial Operating Period," the contract specifies that Motorola, Inc.'s "performance of such operations activities" will be governed by the Operations and Maintenance Contract.^{300/}

In the Operations and Maintenance Contract, Motorola, Inc. and Iridium, Inc. recite that the contract "is intended to function as the vehicle whereby Motorola [, Inc.] will operate or direct the operation of the entire IRIDIUM Communications System, and will maintain the Space System itself by the routine replacement of individual space vehicles."^{301/} Nevertheless, and despite the fact that the contract

^{298/} Iridium Space System Contract at 2. The contract defines the "Space System" as "the integrated combination of the Space Segment and the System Control Segment." *Id.* at 4 (Art. 1(M)). "Space Segment" is defined as the constellation of satellites in low-earth orbit providing 98.5% global coverage. *Id.* at 2 (Art. 1(A)).

^{299/} *Id.* at 12 (Art. 7(A)). See also *id.* at 15 (Art. 9(A)). The agreement states that the "Initial Operating Period" "shall commence immediately after the arrival of the first space vehicle at its designated orbital position, and conclude when [Motorola, Inc.] demonstrates to [Iridium, Inc.] completion of the Space System." *Id.* at 3 (Art. 1(D)). Iridium, Inc. also acquires all of Motorola, Inc.'s rights, title, and interest in the word "IRIDIUM" as a trade and service mark. *Id.* at 20 (Art. 14(D)).

^{300/} *Id.* at 12 (Art. 7(A)).

^{301/} Operations and Maintenance Contract at 2. Significantly, the contract recites that Motorola, Inc. incorporated Iridium, Inc. in 1991 "to, among other things, become the owner/operator of the Space System portion of the IRIDIUM Communications System." *Id.* at 1.

specifies that Motorola, Inc. (again not the applicant) will control the satellites and the day-to-day management of the Iridium communications system,^{302/} the duties of Motorola, Inc. are to be performed for a period of only five years from the conclusion of the Initial Operating Period -- not even a full license term under Proposed Rule 25.120(d).^{303/} Only if Iridium, Inc. so requests will negotiations between Motorola, Inc. and Iridium, Inc. for an extension of the five-year term of the Operations and Maintenance Contract commence.^{304/}

Motorola, Inc.'s Form 10-K filing reveals that these agreements are in effect. They certainly heighten the need for Commission inquiry into the question whether Motorola and/or Motorola, Inc. have already agreed to transfer control of or assign the Motorola application to Iridium, Inc. without amendment to its application and/or prior Commission approval. To be sure, both the Space Systems Contract and the Operations and Maintenance Contract specify that irrespective of "any other provision" of the respective agreements, Motorola, Inc. "shall at all times retain full responsibility for, and all control of" the satellite system.^{305/} While these formalistic statements pay lip service to Section 310 of the Communications Act of

^{302/} See id. at 4 (Art. 2(A)).

^{303/} See id. at 5 (Art. 3).

^{304/} See id. at 27 (Art. 22).

^{305/} Space Systems Contract at 28 (Art. 18(G)); Operations and Maintenance Contract at 20 (Art. 15(G)).

1934, as amended, they would, if taken at face value, squarely contradict the overwhelming weight of the "other provisions," which, taken together, suggest that control has in fact been ceded or is contemplated to be ceded to an entity that is not under common control with the current MSS Above 1 GHz system applicant.

In the second case, another MSS Above 1 GHz applicant, LQSS, recently announced the formation of a partnership to finance and operate its proposed Globalstar system. In this instance, however -- in full compliance with Commission rules and in contrast with the Motorola situation described above -- LQSS filed the necessary amendment explaining its new structure and asserting that a "major change" had not occurred.^{306/}

Although TRW by no means intends to condemn or even criticize the use of innovative financing mechanisms,^{307/} the development of service rules in this proceeding should include clarifying the enforcement of those rules that already govern the pending applications. If existing Commission rules are not enforced, the Commission cannot expect its proposed anti-trafficking rule to achieve its stated purpose to "discourage speculators and to prevent unjust enrichment. . . ."^{308/}

^{306/} See Amendment to Globalstar System Application, File Nos. 19-DSS-P-91 (48) and CSS-91-014 (filed April 22, 1994).

^{307/} Elsewhere in these Comments, TRW calls upon the Commission not to adopt regulations that restrict the flexibility of MSS Above 1 GHz systems to attract foreign investors.

^{308/} See NPRM, 9 FCC Rcd at 1136 (¶ 84).

Accordingly, in order to ensure that its policies and rules are not being flouted either by applicants or licensees, and to facilitate the meaningful development of service rules for the MSS Above 1 GHz service, the Commission must (1) seek from Motorola the information necessary for it to make an adequate and fully-supported finding that Motorola has not transferred control of its application, or its proposed satellite system; and (2) require Motorola to file the necessary amendments pursuant to Sections 1.65 and 25.116 of the Commission's Rules. Whether in the context of this rule making or the Motorola application, all interested parties must be given an opportunity to comment on the factual circumstances developed by such actions.

At a minimum, such information -- and the Commission's response to it -- will help clarify the meaning and scope of the Commission's existing proscriptions in this regard and provide guidance to all MSS Above 1 GHz applicants as to the permissible scope of structural changes to their respective applications. Such clarification will be as meaningful to the applicants as the adoption of other service rules such as financial standards, construction milestones, reporting requirements, and the like. Failure to address such issues, on the other hand, will only lead to endless litigation concerning compliance with existing and proposed Commission rules intended to enable the Commission to rely on applicants and licensees alike to maintain the integrity of their system proposals.

E. THE COMMISSION SHOULD MODIFY ITS PROPOSED REPORTING REQUIREMENTS.

1. The Commission's Rationale For Proposing A Reporting Requirement For The NVNG MSS Does Not Apply To The MSS Above 1 GHz Service.

In the NPRM, the Commission proposes to require MSS Above 1 GHz space station licensees to file annual reports that describe the status of satellite construction and system utilization, and list any system outages or malfunctions. The Commission also proposes to require licensees, within ten days of each implementation milestone listed in its construction permit, to certify by affidavit to the Commission that the milestone has been met or to notify the Commission that it has not been met.^{309/} The annual reporting requirement is modeled after a reporting requirement the Commission imposed in its NVNG MSS Order; the milestone certification requirement is new.^{310/}

At the outset, TRW notes that the Commission's purported need for annual reports covering such matters as system utilization, system outages, and malfunctions is different for the MSS Above 1 GHz than it was for the NVNG MSS. In the NVNG MSS proceeding, the Commission decided not to propose a formal spectrum efficiency standard for the new service. It believed that "if a market for

^{309/} See NPRM, 9 FCC Rcd at 1136 (¶ 85); Proposed Rule 25.143(e).

^{310/} See id.